

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 4 Appendix B, Plate B-1-a
of the Construction Safety Orders**

Sanitation of Personal Safety Devices**SUMMARY**

This proposal was developed by the Division of Occupational Safety and Health (Division) staff to revise an appendix to the Construction Safety Orders that was last amended in 1980. The existing appendix information in Plate B-1-a does not reflect the current industry practice and Title 8 standards that regulate substances that are listed as disinfecting agents. Subsection (1) in Plate B-1-a prescribes the use of formalin, a solution of water and formaldehyde, which is now regulated by Section 5217, Formaldehyde, as a regulated carcinogen. Subsection (2) identifies the use of one name brand product, Lysol, and two toxic chemicals, carbolic acid (phenol), and a 70% solution of denatured alcohol. This proposal will delete these inappropriate instructions from the Construction Safety Orders.

Appendix B, Plate B-1-a provides guidance intended to assist construction industry employers by identifying specific methods and materials for sanitizing personal safety devices, not including respiratory protection devices which are covered in a separate standard. Since the appendix also lists the use of boiling water or the method recommended by the manufacturer for cleaning and sterilizing, the proposed amendment will still provide appropriate guidance for employers that is consistent with current industry practice.

SPECIFIC PURPOSE AND FACTUAL BASIS OF THE PROPOSED ACTION

This proposal is necessary to prevent inappropriate exposure of employees to harmful materials including a regulated carcinogen, formaldehyde; a highly toxic substance, phenol; a poisonous substance, methanol; and a commercial product identified only by the name of the product line, Lysol, made by Reckitt Benckiser Inc. The proposal could also prevent an employer from inadvertently violating Sections 5217 or 5155, and other sections applicable to the use of these specific chemicals. Phenol, methanol, and some constituents of various products made by Lysol could also physically degrade and damage the components of the safety devices that are made of materials developed long after this appendix was written, and not tested for these cleaning methods.

The proposed change would eliminate outmoded harmful practices and retain appropriate recommendations to disinfect equipment with boiling water or by the method specified by the manufacturer of the equipment. The manufacturer is in the best position to provide instructions for disinfecting the equipment in an effective, safe procedure that is also appropriate for the materials used in the equipment.

DOCUMENTS RELIED UPON

1. Division of Occupational Safety and Health Form 9 Request for New, or Change in Existing, Safety Order recommendation from Patrick Bell and Larry McCune regarding Construction Safety Orders Appendix B, Plate B-1-a, dated January 4, 2005.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose any significant nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California, as it represents industry practice.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.